SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR - 4 2016
ARTHUR JOHNSTON
BY ____ DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MADISON COUNTY, MISSISSIPPI
BY AND THROUGH THE
MADISON COUNTY BOARD OF SUPERVISORS** **PLAINTIFFS**

v. **CAUSE NO.** 3:16cv240DPJ-FKB

**RUDY WARNOCK AND
WARNOCK & ASSOCIATES, LLC** **DEFENDANTS**

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1441(c) and §1454, Defendants Rudy Warnock and Warnock & Associates, LLC, (the "Defendants"), specially appearing through their counsel without waiver of Federal Rule of Civil Procedure 12 defenses, hereby remove the above-captioned action (the "State Court Action") from the Circuit Court of Madison County, Mississippi ("State Court") in its entirety to the United States District Court for the Southern District of Mississippi, Northern Division. This action arises under and presents substantial questions of federal law under the Copyright Act, 17 U.S.C. § 101 *et seq.*[1]

Removal of this cause is proper under 28 U.S.C. § 1331, §1338(a) & (c), §1367, §1400, §1441, and §1454. Moreover, under 28 U.S.C. § 1338(a), such federal court jurisdiction in copyright cases is exclusive of the courts of the state.

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[1] A federal court action for copyright infringements and other claims was first filed by these defendants against this plaintiff on February 1, 2016, amended on March 24, 2016, in the matter styled *Warnock & Associates, LLC, and Rudolph M. Warnock, Jr. v. Madison County, Mississippi, Dan Guillet, P.E., Trey Baxter, Sheila Jones, David Bishop, Gerald Steen, and Paul Griffin*, United States District Court for the Southern District of Mississippi, Northern Division, Cause No. 3:16-cv-00068-CWR-FKB, all of which involves the same copyrighted engineering designs, and arises out of the exact same set of facts.

The Court has supplemental jurisdiction over Plaintiff's state law claims 28 U.S.C. Section 1441(c). Specifically, the Action is removable under 28 U.S.C. § 1441(c) because it "includes a claim arising under the Constitution, laws, or treaties of the United States," namely engineering plans and specifications that are protected by the federal Copyright Act, 17 U.S.C. § 101 *et seq*., and because this Court has both original jurisdiction and exclusive jurisdiction under 28 U.S.C. § 1331, §1338(a) & (c), §1367.

This Court is the proper venue for the instant dispute pursuant to 28 U.S.C. § 1391 and 1400. The plaintiff, a county, has committed acts of infringement within this judicial district and division, and is located within this judicial district and division.

I. Procedural History

1. On February 2, 2016, Rudolph M. Warnock, Jr. and Warnock & Associates, LLC (collectively, "Warnock") filed a Complaint in this Court, being Civil Action No. 3:16-cv-00068-CWR-FKB [Doc. 1], as an action for infringement of copyright in violation of the Copyright Act, 17 U.S.C. § 101 et seq., and for injunctive, declaratory and equitable relief, and for breach of contract and bad faith.
2. On March 24, 2016, Warnock filed a First Amended Complaint [Doc. 3], adding as Defendants therein the Madison County Engineer and members of the Board of Supervisors individually.
3. Therein, Warnock asserted that this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367; is the proper venue pursuant to 28 U.S.C. § 1391 and 1400(b) because Defendants reside within this judicial district and division and/or have committed acts of infringement within this

judicial district and division; and that the Defendants in the Federal Action do not have sovereign immunity and are amenable to suit in this Court.

4. Further, the Federal Suit Amended Complaint asserted that the materials in issue fall within the "national protection" provided by the Copyright Act and do not implicate the Mississippi Tort Claims Act. 17 U.S.C. § 511; 17 U.S.C. § 301; 28 U.S.C. § 2201; *see also* U.S. Const. Art. VI cl. 2 (the Supremacy Clause); *Richard Anderson Photography v. Brown*, 852 F.2d 114 (4th Cir. 1989).

5. Rather than answer the Federal Suit, on March 30, 2016, almost two months after the original lawsuit was filed in federal court involving the same engineering designs and drawings, and arising out of the same facts, the Madison County Board of Supervisors field suit in State Court in what can only be presumed to be an attempt to avoid litigating the matter in this Court.

6. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 5(b), the attached Exhibit A comprises the entire publicly available State Court record, including all process, pleadings, and orders served upon the Defendants.

7. This Notice is timely filed under 28 U.S.C. § 1446(b).

II. Basis for removal

8. The Action may removed under 28 U.S.C. § 1441(c) because it includes a claim arising under the Constitution, laws, or treaties of the United States. The engineering plans at issue are subject to federal Copyright Act and the protection those statutes afford. Furthermore, Warnock has already applied to this court, in its Amended Complaint in the Federal Suit, for relief under the federal Copyright

Act. This suit involves those very same plans, among others, and, therefore, includes claims arising under the laws of the United States.

9. Furthermore, this Court has exclusive jurisdiction under 28 U.S.C. § 1338, which provides: "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights." 28 U.S.C. § 1338(a).

10. Jurisdiction of this matter is also proper under 28 U.S.C. § 1331, §1367, §1400, and §1454.

11. Madison County's Complaint herein references the Federal Suit and the fact that it involves the same subject matter and (at least some of) the same projects.

III. Other Procedural Requirements

12. As set forth above, this Notice of Removal is timely filed within 30 days after service of the State Court Complaint. *See* 28 U.S.C. § 1446.

13. This action is properly removed to the United States District Court for the Southern District of Mississippi, Northern Division, which "is the district court for the district where such civil action is pending." *Id.* § 1334(b).

14. Promptly upon the filing of this Notice of Removal, a true copy will be provided to all adverse parties pursuant to 28 U.S.C. § 1446(d). Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, the Defendants will file with this Court a Certificate of Service of Notice to Adverse Parties of Removal to Federal Court.

15. Concurrently with the filing of this Notice of Removal, the Defendants are filing a Notification of Filing of Notice of Removal with the clerk of the State Court in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, PREMISES CONSIDERED, the Defendants remove this Action in its entirety from the Circuit Court of Madison County, Mississippi.

This 4th day of April, 2016.

Respectfully submitted,

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David S. Humphreys, MSB #100085
Julie C. Skipper, MSB #101591
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Rudy Warnock and Warnock & Associates, LLC

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CERTIFICATE OF SERVICE

I, Dorsey R. Carson, Jr., hereby certify that I filed a true and correct copy of the foregoing pleading via Hand Delivery to the following:

Mr. Arthur Johnston, Clerk
U. S. District Court
Southern District of Mississippi, Northern Division
501 E. Court Street, Suite 2.500
Jackson, Mississippi 39201

and to the following parties via the Court's ECF Filing System or U.S. Mail, postage prepaid:

Honorable Steve S. Ratcliff, III
Madison County Circuit Court
128 West North Street
P. O. Box 1626
Canton, Mississippi 39046

Ms. Anita Wray, Circuit Clerk
Madison County Circuit Court
128 West North Street
P. O. Box 1626
Canton, Mississippi 39046

David Mockbee, Esq.
Alexander Guidry, Esq.
Mockbee Hall & Drake, P.A.
Capital Towers, Suite 1820
125 S. Congress Street
Jackson, Mississippi 39201

This the 4th day of April, 2016.

OF COUNSEL